SUPREME COURT, U. S.

FILED
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IN THE

Supreme Court of the United States

No. 71-544

SALYER LAND COMPANY, a California Corporation,
Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, *Respondent,*
KINGS COUNTY DEVELOPMENT COMPANY, a California Corporation, *Real Party in Interest.*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE SECOND APPELLATE DISTRICT

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE SECOND APPELLATE DISTRICT

The petitioner Salyer Land Company respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California for the Second Appellate District entered in this proceeding on June 25, 1971.

OPINION BELOW

No opinion was rendered by the California Court of Appeal for the Second Appellate District. No opinion was rendered by the California Supreme Court on its denial of a petition for hearing, following judgment by the Court of Appeal for the Second Appellate District.

JURISDICTION

The judgment of the California Court of Appeal for the Second Appellate District was entered on June 25, 1971. A timely petition for hearing in the California Supreme Court was denied on July 21, 1971, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether a landlord may sue its tenant in a state court for a share of federal price support payments made to the tenant as a "cooperator" in the cotton program, 7 U.S.C. Section 1444, without the landload first having sought an administrative remedy in the Department of Agriculture, or whether 7 U.S.C. Section 1444(d) (10) vests in the Secretary of Agriculture exclusive and final jurisdiction to determine the sharing of price support payments.

2. Whether a landlord which is in a dispute with its tenant over the size of the landlord's federal cotton allotment, may sue in the state courts to have the size of such cotton allotment determined, or whether this is exclusively a matter for determination administratively within the Department of Agriculture and on limited appeal therefrom as provided in 7 U.S.C. Sections 1362-67.

3. Whether a landlord which is in a dispute with its tenant concerning the collection from the tenant of $1 a bale as required by 7 U.S.C. Section 2106 for cotton research, may sue the tenant in the state courts to recover such sum, or whether the remedies provided of application to the Cotton Board for a refund, 7 U.S.C. Section 2110, or petition to the Secretary of Agriculture, 7 U.S.C. Section 2111 ff., are exclusive.

STATUTORY PROVISIONS INVOLVED[1]

7 U.S.C. Section 1444(d) (10); 7 Code of Federal Regulations Section 719.2(s); 7 Code of Federal Regulations Section 780.2; 7 Code of Federal Regulations, Section 780.3; 7 Code of Federal Regulations, Section 780.4; 7 Code of Federal Regulations, Section 780.5; 7 Code of Federal Regulations, Section 780.9; 7 U.S.C. Section 1362; 7 U.S.C. Section 1363; 7 U.S.C. Section 1365; 7 U.S.C. Section 1367; 7 U.S.C. Section 2110; 7 U.S.C. Section 2111.

STATEMENT OF THE CASE

Kings County Development Company, a California corporation, real party in interest, hereinafter referred to as the landlord, owns approximately 5,000 acres of land in the dry bed of Tulare Lake in Kings County, California. In January of 1966 the property was leased to Salyer Land Company, a California corporation, petitioner, hereinafter referred to as the tenant, for a term of fifteen years. The principal cash crop in Tulare Lake is cotton, and a dispute has arisen between the landlord and the tenant respecting the

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[1] Because of the length of the statutory provisions and regulations, the text is set forth in the appendix. Rule 23(d).

federal government's cotton program. In brief, the landlord contends that it should receive a share of the federal price support payments received by the tenant, under one alternative of the lease, by adding the price support payment expressed in cents per pound to the index upon which the rental is computed or in the alternative by adding the total amount of the price support payments to the gross amount by which the tenant's share is computed. The tenant contends that the Congress vested sole jurisdiction of such a dispute in the Secretary of Agriculture—

> "(d) (10) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing diversion payments on a fair and equitable basis under this subsection. The Secretary shall provide for the sharing of price support payments among producers on the farm on the basis of their respective shares in the cotton crop produced on the farm, or the proceeds therefrom, except that in any case in which the Secretary determines that such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as he may determine to be fair and equitable."

and that here the Secretary would not be likely to decide that the landlord is entitled to a share of these payments because the lease provides to the contrary:

> "28. SALYER's Right to Government Payments.
>
> SALYER[1] shall be entitled to all government payments attributable to the Lands under present or future farm programs. Should any such pay-

[1] Salyer Land Company, the tenant, and petitioner here.

> ment be forwarded to KCD [2] by any governmental office or agency, the check or draft representing such payment shall be promptly endorsed by KCD and forwarded to SALYER."

The reason for this paragraph was that the tenant alone took the 12½ percent in cotton allotment effected by the 1965 farm bill, the act of November 3, 1965.

The tenant made no application to the County Committee of the Agricultural Conservation and Stabilization Service, as provided in the regulations issued by the Secretary of Agriculture to implement his Congressional responsibility to decide disputes over subsidy payments. 7 C.F.R. Sections 780.2 ff. The Department of Agriculture paid all of the price support payments to the tenant. The landlord, without any move toward administrative relief at all, filed an action against the tenant in the Superior Court of the State of California for the County of Los Angeles.

The second controversy, closely related and also involving the Government's cotton program, concerns the size of the landlord's cotton allotment. The landlord's remedy, and the proper way to have a determination of cotton allotment, is an application to the Agricultural Stabilization and Conservation Service County Committee pursuant to 7 C.F.R. Section 719 ff. If dissatisfied with the decision of the county committee, which has all the records of cotton allotments in its jurisdiction, either the landlord or the tenant could appeal to the Review Committee, 7 U.S.C. Section 1363. Either party dissatisfied with the Review

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[2] Kings County Development Co., the landlord and real party in interest.

Committee's decision might within fifteen days file a bill in equity in the United States District Court or in the state court of record where the land is located. 7 U.S.C. Section 1365. This landlord did none of these things, but repaired to the Superior Court in Los Angeles, which is not even the state court where the land is located. This was in spite of the provision of 7 U.S.C. Section 1367 that

> "No Court of the United States or of any State shall have jurisdiction to pass on the legal validity of any such determination [of allotment] except in a proceeding under this part."

The third controversy between the parties concerns the provisions of Public Law 89-502, 7 U.S.C. Sections 2101 ff., raising money for cotton research by assessing all cotton $1 a bale. The assessments were voluntary to the extent that any producer who wanted his money back had only to file a demand with the Cotton Board, and the $1 a bale had to be refunded within sixty days. 7 U.S.C. Section 2110. Further administrative and judicial relief could be had by petition with the Secretary of Agriculture, and appeal from his ruling to the United States District Court. 7 U.S.C. Section 2111. Here again the landlord filed no application for a refund, and filed no petition with the Secretary of Agriculture, but sued the tenant in the state court, alleging that the $1 a bale had been "contributions . . . without consent of plaintiff".

The tenant moved the trial court to dismiss for lack of subject matter jurisdiction, on the ground that the federal cotton program is an entity completely federal in concept and that the congress which enacted the program provided exclusive remedies to be followed. It was pointed out that several of the Congressional

enactments dealing with the federal argicultural program expressly state that no court shall have jurisdiction to adjudicate controversies thereunder other than as is expressly provided therein, 7 U.S.C. Section 1367 being an example. The Secretary of Agriculture's regulations involving disputes concerning subsidy payments, 7 C.F.R. Section 780.2, expressly provide that the ultimate determination of the Deputy Administrator shall be final. "Determinations made by the Deputy Administrator shall not be appealable by the producer or participant." [7 C.F.R. Section 780.9] In addition it is a well recognized rule in California law that failure to exhaust an administrative remedy deprives the courts of that state of jurisdiction to act. *Abelleira* v. *District Court of Appeal,* 17 Cal. 2d 280, 109 P. 2d (1941). The trial court denied the tenant's motion, and the tenant thereupon applied to the Court of Appeal of the State of California for the Second Appellate District for a writ of prohibition.

The Court of Appeal denied the tenant's application for the writ, without opinion, and the California Supreme Court declined to hear the case.

REASONS FOR GRANTING THE WRIT

1. The California State Courts Have Decided a Federal Question of Substance Not Heretofore Determined by This Court

The Supreme Court of the United States has never passed on the extent to which the administrative procedures set up by the Congress in federal farm legislation are exclusive. Several of the Circuits have expressed themselves on this point. See, e.g., *Jilka* v. *Saline County, Kansas,* 330 F. 2d 73 (10th Cir. 1964), holding that the provision in 7 U.S.C. Section 1365 for determination of the size of an allotment is "special

and exclusive . . . and failure to seek review in accordance therewith deprives the court of jurisdiction to consider the administrative action." [330 F. 2d at 74] The Fifth Circuit entertains the same view. In *Allen* v. *David,* 334 F. 2d 592, 599 (5th Cir. 1964), that Court held that,

> "The language of the [Agricultural] Act imports to us that an exclusiveness of jurisdiction and review is lodged within the framework of the administrating agency." [334 F. 2d at 599]

The text of the statutes and regulations as set forth in this petition were successively, if not successfully, drawn to the attention of the Superior Court in Los Angeles, the Court of Appeal for the Second Appellate District, and the California Supreme Court. The ambit of these statutes and regulations is as wide as the federal farm program, which is to say that their effect should be felt through the United States. But the recognition they have received from the California courts is adequate demonstration of the need for the Supreme Court of the United States to underline their existence.

This case, an action for declaratory and coercive relief filed in the California Superior Court for Los Angeles County, has as its central feature determination of the parties' rights under the federal cotton program. Act of November 3, 1965, Public Law 89-321. The landlord under an agricultural lease is claiming under one alternative by which rental is computed for this 5,000 acre ranch that cotton price support payments paid to the tenant under the Act should have been divided with the tenant. Under another alternative for computing rental the landlord seeks to realize

in effect a share of the federal price support payment, by claiming that such payment should have been added to the price index by which the rental is fixed under that alternative. Rental under neither alternative can be computed without determining the landlord's cotton allotment, for under one alternative the landlord is to share in 25 percent of the product of that allotment, and under the other alternative an annual cash rental of $200,000 is to be increased or diminished $80.19 for each acre of increase or diminish of that cotton allotment. After having agreed in the lease itself that the allotment was 1015.3 acres, the landlord now claims that it is 1055 acres; the California State Court is asked to make this determination also. To further compound the error, the landlord seeks in the California Superior Court to recover the sum of $1 a bale charged to its share of the cotton crop pursuant to 7 U.S.C., Section 2106, and which the Congress provided shall be refunded upon request to the Cotton Board, 7 U.S.C., Section 2110, or by petition to the Secretary of Agriculture, 7 U.S.C., Section 2111 ff.

Under the federal legislation concerning cotton allotments, only the Agricultural Conservation and Stabilization Service can determine them; and the only judicial remedy is that provided in 7 U.S.C., Section 1365. That remedy is exclusive:

> "No Court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this part." [7 U.S.C. Section 1367]

Under the applicable federal regulations, the landlord's remedy to have his cotton allotment officially (and accurately) determined is an application to the

Agricultural Conservation and Stabilization Service County Committee, 7 Code of Federal Regulations, Section 719.1 ff., which will "reconstitute" the landlord's allotment, theretofore "combined" with the tenant's other farms as permitted by the same regulations and by paragraph 9 of the lease. The County Committee must notify "all interested owners and operators" of its action, 7 C.F.R. Section 719.5; 7 U.S.C. Section 1362. Appeal is to the Review Committee, 7 U.S.C. Section 1363, and its determination of the cotton allotment may be reviewed only by bill in equity filed in the United States District Court or in a state court sitting in the county where the land is located. 7 U.S.C., Section 1365. "Notwithstanding any other provision of law, the jurisdiction conferred by this part to review the legal validity of a determination made by a review committee pursuant to this part shall be exclusive." 7 U.S.C. Section 1367.

The landlord in this case has not gone to the County Committee. It has not gone to the Review Committee. The State Court in which it has filed its action would not be appropriate even for review, for the land is in Kings County, California, and the landlord filed its suit in Los Angeles County.

The California Superior Court is an equally inappropriate forum for the other relief the landlord seeks. The claim to a portion of the price support payments is governed by 7 U.S.C. Section 1444(d)(10):

> "The Secretary [of Agriculture] shall provide for the sharing of price support payments among producers on the farm on the basis of their respective shares in the cotton crop produced on the farm or the proceeds therefrom, except that in any case in which the Secretary determines that

> such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as he may determine to be fair and equitable."

The tenant was confident that the Secretary would not have required division in this case, for the lease contained the following provision:

> "SALYER's Right to Government Payments.
>
> "SALYER shall be entitled to all government payments attributable to the Lands under present or future farm programs. Should any such payment be forwarded to KCD by any governmental office or agency, the check or draft representing such payment shall be promptly endorsed by KCD and forwarded to SALYER."

As before stated, the reason for this was that the tenant absorbed the 12½ percent cut in allotment effected by the 1965 farm bill, and continued the landlord's rental based on its allotment before that cut.

The landlord's remedy, in any event, was by application to the County Committee, Agricultural Conservation and Stabilization Service, then to the State Committee, and finally to the Deputy Administrator, Department of Agriculture. See 7 C.F.R. Section 780.2 ff:

> "(a) 'County committee' and 'Deputy Administrator' shall have the meaning given to them under the regulations governing Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Acreages, Part 719 of this chapter, as amended.
>
> "(b) 'Producer or participant' shall mean any person whose right to participate or receive payments, or the amount thereof, under any of the

programs covered by these regulations, is affected by a determination of the county committee, State committee, or Deputy Administrator. * * *

"(c) 'Reviewing authority' shall mean the county committee, State committee, or Deputy Administrator, as appropriate.

"(d) 'State committee' shall have the meaning given to it under the regulations governing Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Base Acreages, Part 719 of this chapter, as amended. * * *"

* * *

"Any producer or participant who is dissatisfied with any determination initially made by the county committee or office, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing in connection therewith by filing a request for reconsideration with the county committee. * * * [7 C.F.R. Section 780.3]

"Any producer or participant who is dissatisfied with the determination of the county committee upon its reconsideration of the initial determination made by it or the county office may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an appeal with the State committee. [7 C.F.R. Section 780.4]

". . . any producer or participant who is dissatisfied with the determination of the State committee upon reconsideration of its determination or upon appeal from a determination of the county committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator." [7 C.F.R. Section 780.5]

> "The producer or participants shall be notified in writing of the determination. Each other person affected by the determination shall be notified of the determination. Determinations made by the Deputy Administrator shall not be appealable by the producer or participants." [7 C.F.R. Section 730.9]

Despite this Congressional provision for administrative determination of any issue concerning division of cotton subsidy payments, *and for the decision of the Deputy Administrator to be final,* this landlord has repaired to the State courts, not troubling itself even initially with the procedure prescribed by Congress.

This disregard of federal statutes is manifest also in the third avenue of relief sought by the landlord, attempted recovery of a charge of $1 a bale which the tenant was required by law to exact:

> "It is . . . declared to be the policy of the congress and the purpose of this chapter that it is essential in the public interest through the exercise of the powers provided herein, to authorize and enable the establishment of an orderly procedure for the development, financing through adequate assessments on all cotton harvested in the United States and carrying out an effective and continuous coordinated program of research and promotion designed to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for United States cotton. [7 U.S.C. Section 2101]

> "To effectuate the declared policy of this chapter, the Secretary [of Agriculture] shall, subject to the provisions of this chapter, issue and from time to time amend, orders applicable to persons engaged in the harvesting, marketing, ginning, or other handling of cotton, hereinafter referred to

as handlers. Such orders shall be applicable to all production or marketing areas, or both, in the United States. [7 U.S.C. Section 2102]

"The rate of assessment prescribed by the order shall be $1 per bale of cotton handled. The Secretary may maintain a suit against any person subject to the order for the collection of such assessment, and the several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy. [7 U.S.C. Section 2106]

"Any handler who willfully violates any provision of any order issued by the Secretary under this chapter, or who willfully fails or refuses to collect or remit any assessment or fee duly required of him thereunder, shall be liable to a penalty of not more than $1,000 for each offense which shall accrue to the United States and may be recovered in a civil suit brought by the United States." [7 U.S.C. Section 2112]

The incredible thing is that the landlord has sued the tenant in the State Court to get this $1 a bale back, when all in the world the landlord had to do was to demand a refund from the Cotton Board:

"Refund of producer assessments. Notwithstanding any other provision of this chapter, any cotton producer against whose cotton any assessment is made and collected from him under the authority of this chapter and who is not in favor of supporting the research and promotion program as provided for herein shall have the right to demand and receive from the Cotton Board a refund of such assessment: Provided, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary, but in no event less than ninety days, and upon submission of

> proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor." [7 U.S.C. Section 2110]

Nor was this all. The federal statutes provided that landlord could also have filed a written petition with the Secretary of Agriculture stating that an obligation had been imposed on it in connection with the order for an assessment of $1 a bale that was "not in accordance with law." 7 U.S.C. Section 2111 ff. There was provision for "a hearing upon such a petition, in accordance with regulations made by the Secretary." The Secretary's ruling could have been reviewed in the United States District Courts. 7 U.S.C. Section 2111(b).

2. Guidance From This Court Is Needed If the Statutes and Regulations Concerning Administrative Remedies in the Farm Program Are To Be Given Effect

The involvement of the federal government in American agriculture is very great, and implementation of the Congressional enactments and the Secretary of Agriculture's regulations respecting that involvement is of obvious importance. California is one of the leading states in the Union in terms of the cash value of its agricultural product, and California has been near the top of the states as a recipient of federal agricultural subsidies. The fact that the Superior Court in Los Angeles, the Court of Appeal for the Second District and the California Supreme Court have all failed to observe the plain provision of such a statute as 7 U.S.C. Section 1367,

> "No Court of the United States or of any state shall have jurisdiction to pass upon the legal

> validity of any such determination except in a proceeding under this part."

demonstrates that guidance from the United States Supreme Court is needed if the national objectives of the federal legislation are to be given national effect.

The position of the Fifth Circuit is in direct conflict with the position of the California State Court. In *Allen* v. *David, supra,* 334 F. 2d 592 (5th Cir. 1964), that circuit held that "the Agricultural Act is a public law, not a private law; therefore no vested rights may be obtained under it." The Court continued:

> "Since the Act and its attendant regulations do not vest in the plaintiffs any legally recognizable rights other than those specifically enumerated therein; and since administrative avenues have been carefully laid out along which an aggrieved party may travel while seeking redress, we must reason that the plaintiffs choosing not to travel the road to administrative review as provided for them, have placed before the court a controversy over which we lack the power to render a binding decision under the facts and in the circumstances here involved." [334 F. 2d at 599]

The Fifth Circuit gave another reason which would justify certiorari in the present case, and the issuance of guidelines which would be applicable nationally:

> "We do not take the position that either the Act or the regulations pursuant to the Act are simple. We regard them as complicated, lengthy and difficult." [Ibid.]

The Eighth Circuit has also held that these matters are exclusively for administrative determination and

limited judicial review under the terms of the Agricultural Act. In *Weis* v. *United States,* 310 F. 2d 149 (8th Cir. 1962), the Court stated as follows:

> "We believe that the statutes and the regulations place the initial responsibility for determining quotas and marketing excess with the County ASC Committees. The statutes and regulations previously discussed set out the exclusive means for attacking the decisions of the county committees upon such issues. If no appeal is taken from the county committee to the review board, such committee's decision is final. Section 1363. A dissatisfied farmer who has not exhausted the review board remedy cannot reach the courts. Such is the situation here." [310 F. 2d at 157]

CONCLUSION

The Congress in 7 U.S.C. Section 2101 has found that,

> "Cotton is the basic natural fibre of the Nation."
>
> * * *
>
> ". . . the Congress has provided for the comprehensive exercise of regulatory authority in regulating the handling of such cotton supplemented by price-support programs with the objective of adjusting supply to demand in the interest of benefiting producers and all others concerned with the production and handling of cotton as well as the general economy of the county."

This statute adequately demonstrates the Congressional view, which is national. The action taken by this landlord in suing in the State Courts of California is parochial. The position of the Superior Court in the County of Los Angeles, the Court of Appeal for the Second District and the California Supreme Court,

in sanctioning such litigation, is similarly parochial. If the farm legislation and regulations thereunder are to have national scope and uniform application, the writ of certiorari should issue, and the decision below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

Orders Below

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES #939214

KINGS COUNTY DEVELOPMENT COMPANY, etc.
v.
SALYER LAND COMPANY, a California corporation

Motion of Defendant Salyer Land Company for Order To Dismiss Complaint and for Entry of Summary Judgment

Matter, transferred from Department 66, comes on for hearing.

After argument, matter stands submitted.

LATER . . . .

Motion is denied.

Appearing counsel notified by mail this date.

September 24, 1970, Department 59

Los Angeles, Cal. June 25, 1971

TITLE { SALYER LAND CO. vs. SUPERIOR COURT L.A. CO. .

THE COURT: Petition for writ of prohibition denied.

CLAY ROBBINS, *Clerk*

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
San Francisco, California 94102
July 21, 1971

DEAR SIR: I have this day filed Order .....
..... HEARING DENIED .....
.....

In re: 2 Civ. No. 38401
SALYER LAND CO.
vs.
SUPERIOR COURT, L. A. Co.

Respectfully,

G. E. BISHEL, Clerk

Text of Statutes and Regulations

United States Code, Title 7:

Section 1444. Cotton price support levels—Basic support levels for 1961 and subsequent years.

> "(d) (10) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing diversion payments on a fair and equitable basis under this subsection. The Secretary shall provide for the sharing of price support payments among producers on the farm on the basis of their respective shares in the cotton crop produced on the farm, or the proceeds therefrom, except that in any case in which the Secretary determines that such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as he may determine to be fair and equitable."

7 Code of Federal Regulations, Section 719.2(s):

> "Producer. Person who as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof . . . ."

7 Code of Federal Regulations, Section 780.2:

> "(a) 'County committee' and 'Deputy Administrator' shall have the meaning given to them under the regulations governing Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Base Acreages, Part 719 of this chapter, as amended.
>
> "(b) 'Producer or participant' shall mean any person whose right to participate or receive payments, or the amount thereof, under any of the programs covered by these regulations, is affected by a determination of the county committee, State committee, or Deputy Administrator. * * *

"(c) 'Reviewing authority' shall mean the county committee, State committee, or Deputy Administrator, as appropriate.

"(d) 'State committee' shall have the meaning given to it under the regulations governing Reconstitution of Farms, Farm Allotments and Farm History and Soil Bank Base Acreages, Part 719 of this chapter, as amended. * * * "

7 Code of Federal Regulations, Section 780.3:

"Any producer or participant who is dissatisfied with any determination initially made by the county committee or office, State committee, or Deputy Administrator, may obtain a reconsideration of such determination and an informal hearing in connection therewith by filing a request for reconsideration with the county committee. * * * "

7 Code of Federal Regulations, Section 780.4:

"Any producer or participant who is dissastisfied with the determination of the county committee upon its reconsideration of the initial determination made by it or the county office may obtain a review of such determination by the State committee and an informal hearing in connection therewith by filing an apppeal with the State committee."

7 Code of Federal Regulations, Section 780.5:

". . . [A]ny producer or participant who is dissatisfied with the determination of the State committee upon reconsideration of its determination or upon appeal from a determination of the county committee may obtain a review by the Deputy Administrator of such determination and an informal hearing in connection therewith by filing an appeal with the Deputy Administrator."

7 Code of Federal Regulations, Section 780.9:

"The reviewing authority prior to making a determination may request the producer or participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review and within program authorities, the reviewing authority may affirm, modify, or reverse any determination made by it initially or made by a lower reviewing authority, or may remand the matter to a lower reviewing authority for such further consideration as is deemed appropriate. The producer or participant shall be notified in writing of the determination. Each other person affected by the determination shall be notified in writing of the determination. Determinations made by the Deputy Administrator shall not be appealable by the producer or participant."

7 U.S.C. Section 1362:

"All acreage allotments, and the farm marketing quotas established for farms in a county or other local administrative area shall, in accordance with regulations of the Secretary, be made and kept freely available for public inspection in such county or other local administrative area. An additional copy of this information shall be kept available in the office of the county agricultural extension agent or with the chairman of the local committee. Notice of the farm marketing quota of his farm shall be mailed to the farmer.

"Notice of the farm acreage allotment established for each farm shown by the records of the county committee to be entitled to such allotment shall insofar as practicable be mailed to the farm operator in sufficient time to be received prior to the date of the referendum."

7 U.S.C. Section 1363:

> "Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 1362 of this title, have such quota reviewed by a local review committee composed of three farmers from the same or nearby counties appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final."

7 U.S.C. Section 1365:

> "If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail or by certified mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact."

7 U.S.C. Section 1367:

"The commencement of judicial proceedings under this part shall not, unless specifically ordered by the court, operate as a stay of the review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this part to review the legal validity of a determination made by a review committee pursuant to this part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this part."

7 U.S.C. Section 2110:

"Notwithstanding any other provision of this chapter, any cotton producer against whose cotton any assessment is made and collected from him under the authority of this chapter and who is not in favor of supporting the research and promotion program as provided for herein shall have the right to demand and receive from the Cotton Board a refund of such assessment: Provided, That such demand shall be made personally by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary, but in no event less than ninety days, and upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought, and any such refund shall be made within sixty days after demand therefor."

7 U.S.C. Section 2111:

"(a) Any person subject to any order may file a written petition with the Secretary, stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in

accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

"(b) The district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 2112(a) of this title."

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IN THE

Supreme Court of the United States

October Term, 1971
No. 71-544

SALYER LAND COMPANY, a California corporation,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent,

KINGS COUNTY DEVELOPMENT COMPANY, a California corporation,
Real Party in Interest.

Brief of Real Party in Interest in Opposition to Petition for a Writ of Certiorari.

Question Presented for Review.

Why cannot a state court construe a lease of farmland within the state, when the issues are solely those of ordinary contract interpretation and require no expertise in administering the technicalities of federal farm programs?

Statement of the Case.

Plaintiff and real party in interest, Kings County Development Company ("KCD"), owns farmland in Kings County, California. KCD has leased some 5,000 acres to Defendant/Petitioner Salyer Land Com-

pany ("Salyer"), a large corporate farming concern. Salyer farms KCD's land, together with about 35,000 additional acres. The lease is for 15 years, beginning with 1966. It was bargained at arm's length over six or more months.*

The parties disagree chiefly over how much rent Salyer owes under an arithmetic formula in the lease. The formula ties the amount of rent to the price of cotton. There are two subsidiary issues. The first is whether *in fact* the cotton allotment for KCD's land has been increased since the date of the lease. If so, KCD would be entitled, under the lease, to $80.19 for each acre of such increase. The second subsidiary issue is whether, despite a provision that Salyer is to bear all expenses of producing crops on the land, Salyer can charge KCD for payments Salyer is required by law to make to the Cotton Producers' Institute on each bale of cotton produced on the land.

The case is set for trial January 25, 1972. The arguments raised in the Petition have been made to three separate courts below. Neither the trial court, any of the Justices of the California Court of Appeal who

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*The facts referred to appear in the declaration and affidavits filed in connection with Salyer's motion below for summary judgment. The trial court denied the motion in September 1970. The same facts were before the California Court of Appeal when it summarily denied Salyer's petition for a writ of prohibition in June 1971 and before the Supreme Court of California when it summarily denied a hearing in July 1971.

considered the matter, nor any of the Justices of the California Supreme Court has recorded any agreement with Salyer's position.

Summary of Argument.

The case involves only the interpretation of a private lease. The issues are no different from the kind state trial courts regularly decide. The state court has not and will not decide any federal question of substance and there is no basis for certiorari under this Court's Rule 19.

The petition incorrectly portrays plaintiff, real party in interest, as asking the state court to decide what cotton crop allotments should be and to administer federal farm subsidy programs and policies. In truth, the main issue is how rent is to be calculated under an arithmetic formula in a privately negotiated lease. The state court is not asked to decide what anyone's cotton allotment or crop subsidy ought to be or otherwise to involve itself in federal farm programs. This suit seeks only to enforce the agreement of the parties as to how, between them, to calculate the rent one should pay the other.

The state court is not asked to judge the legality or merit of, and plaintiff has no dispute with, any federal administrative or legislative decision. The administrative remedies Petitioner pictures as exclusive are not even applicable, for they are limited by their own terms to such disputes.

ARGUMENT.

I.

The Case Raises Straightforward Issues of Contract Interpretation.

This case is simply about a contract and how it is to be construed. The trier needs no expertise in the administration of federal farm programs or policies.

A. The Chief Issue: The Proper Calculation of the Annual Rent Under the Terms of the Lease.

The lease provides two methods of calculating rent. Each is expressed as an arithmetic formula. KCD elects the method for each year.

The first method specifies a base annual rent of $220,000, adjusted up or down according to changes in the price of cotton received by Salyer. The second method provides for a money rent equal to 25% of the total price Salyer receives from all crops it produces on KCD's land.

The lease expresses the first method as follows:

> "A cash rental of $220,000.00 each year . . . based on the average *price of cotton received by SALYER* for the years 1962, 1963, and 1964, which said average price was 34.21 cents per pound.
>
> ". . .
>
> "In the event that the *price of cotton received by SALYER* during any year . . . [differs from] 34.21 cents per pound, the annual cash rental . . . shall be increased or decreased in the same proportion as 34.21 cents bears to the *per pound price of cotton received by SALYER* during said year." (Emphasis added.)

The alternative provision is for:

> ". . . [T]wenty-five (25%) of the *total price received by SALYER* from all crops produced on the Lands during such year." (Emphasis added.)

The major issue is whether the "price" of cotton "received by Salyer" includes cotton price support payments received by Salyer. In other words, does the lease mean that price support payments received by Salyer for the specific purpose of raising the price of cotton are part of the "price" of cotton in calculating the rent?

Cotton price support payments have been so many cents per pound of cotton produced per year, depending upon the price at which the government has sought to peg cotton. KCD contends that price support payments should be included in "price" in calculating the rent; Salyer contends not. The amounts of these payments are undisputed.

The petition pictures KCD as seeking to have Salyer pay over a portion of the cotton subsidies received by Salyer (Petition, pp 2, 4). KCD alleges no such thing. The issue is whether price support payments (which are not all the cotton subsidies received by Salyer) are to be included in the "price" of cotton "received by Salyer" for the purpose of making the purely arithmetic calculation called for by the lease.

Throughout negotiations for the lease, KCD's representatives sought a guaranteed minimum cash rent, referring habitually to a "net-net" or "net-net-net" lease. Handwritten notes by Salyer's president, produced during discovery, contain numerous corroborative references: "Pay KCD cash rental of $220,000 on a Net

Net basis"; "Cash rental Net-Net to KCD $220,000 year"; "Cash rentals Net Net to KCD"; and "Net Net basis to K.C.D."

Because the proposed lease term was long, KCD also sought a hedge against inflation or deflation. Salyer told KCD frequently during the negotiations that it could afford to pay $220,000 in any year which was as good, measured in terms of cotton, as the average of the then preceding three years (1962-64). On July 1, 1965, Salyer proposed a sliding formula tying the rent to changes in the price of cotton:

> "2. The rental would be $220,000 per year.
> . . .
> "
> . . .
>
> "6. There would be a clause providing protection against both inflation and deflation along the following lines: Should the Kings County Development Company elect . . ., the amount of rent would be determined by using the average price received by the Salyer Land Company based on the years of 1962, 1963 and 1964, which is 34.21¢ a pound. . . . [T]he cash rent would . . . vary up or down from the $220,000, as follows:
>
> 1. $220,000 at 34.21 = $223,215.43 at 34.71 average price
> 2. $220,000 at 34.21 = $226,430.66 at 35.21 average price
> 3. $220,000 at 34.21 = $216,784.56 at 33.71 average price
> 4. $220,000 at 34.21 = $213,569.13 at 33.21 average price."

This formula was written into the lease without material change.

Until 1966, cotton subsidies were so structured that farmers received the benefit of them through higher prices paid by cotton processors for raw cotton. Thus, during 1962-64, whose average Salyer chose as the base for the formula, the prices farmers received from processors reflected cotton subsidies and were higher by reason of government subsidies than if those prices had been determined solely by supply and demand. Hence, the "average price" Salyer received for cotton during 1962-64 included government subsidies.

Starting with 1966, the first year of the lease, price support payments were paid directly to cotton farmers. Beginning with the first year of the lease, therefore, the farmer, upon selling cotton to the processor, received only the unsubsidized or "true market" price, whereas in 1962-64 the price the processor paid the farmer reflected government subsidies.

This procedural change did not affect the farmer's total receipts per pound for cotton. In total, the farmer continued to receive for each pound of cotton a sum reflecting both the unsubsidized "true market" price and the government subsidy, just as in previous years.

To exclude price support payments from "the price of cotton received by Salyer" under the lease formula would be inconsistent with Salyer's expressed intent to pay $220,000 in any year which was as good, measured in terms of cotton, as the 1962-64 average. For example, Salyer would do as well in any year from 1966 on in which the unsubsidized "true market" price was $.30 per pound and the direct price support payment $.0421 per pound, for a total of $.3421 per pound, as it had done in 1962-64, when the average price paid by cotton processors, which re-

flected price support subsidies, was $.3421 per pound. KCD could realize a $220,000 rent in any year which was as good for Salyer, measured in terms of cotton, as the average of 1962-64 only by including in the "price received by Salyer" for cotton the government's cotton price support payments.

Thus, the issue is what the parties intended, under the objective factual circumstances, when they contracted using the words "the price of cotton received by Salyer." Such an issue is purely one of common law contract interpretation. It requires no determination respecting any federal farm policy or program.

That the issue is solely contractual intent and in no way the administration of federal farm programs is highlighted by Salyer's reliance upon ¶ 28 of the lease (Petition, pp. 4-5, 11) to avoid its expressed intent to pay $220,000 in any year which was as good, expressed in terms of cotton, as the 1962-64 average. At a meeting in Los Angeles just before the lease was put in final form, Salyer proposed a new provision, which became ¶ 28:

> "SALYER shall be entitled to all government payments attributable to the Lands under present or future farm programs. Should any such payment be forwarded to KCD by any governmental office or agency, the check or draft representing such payment shall be promptly endorsed by KCD and forwarded to SALYER."

The Petition twice asserts that this provision was included because Salyer absorbed an allotment cut under the 1965 farm bill (Petition, pp. 5, 11). If so, the issue would still be one of contract interpretation de-

pendent upon the expressed intent of the parties. The assertion, however, is without basis.

The only record facts as to the intent with which the new paragraph became part of the lease reveal a classic question of common law contract interpretation. At the meeting, KCD asked the paragraph's purpose. Salyer's counsel replied that it was to spell out what would happen if KCD were to receive a subsidy check directly from the government. He stated that Salyer wanted to be sure KCD would endorse and forward the check to Salyer. No one said that the paragraph had anything to do with calculating rent. KCD had learned earlier that owners who leased their land to farmer operators sometimes received subsidy checks meant for the operators because the government assumed that the owner was farming the land. KCD thus accepted the paragraph.

B. The Minor Issues: The Size of KCD's Cotton Allotment and the $1 a Bale Cotton Research Contribution.

The Petition treats two minor issues as central, presumably because they can be more readily be made to look resolvable only by administrative expertise. In unsuccessfully moving for summary judgment last year, however, Salyer told the trial court that the "only controversy of any substance" concerned the rent formula. Salyer considered the other issues so minor, in fact, that its motion papers offered to concede them in return for summary judgment on the main issue.

Even if—as is not the case—these issues raised questions reserved for administrative agencies, the major issue would remain for state court determination as a matter of contract law. In any event, the minor issues also present only common law contract questions.

1. *The Size of KCD's Cotton Allotment.*

The lease recites that as of its signing the land had a 1015.5 acre cotton allotment. This acreage was the maximum which could be planted to cotton with respect to KCD's land and still qualify the farmer for cotton subsidies. The parties obviously anticipated that the allotment might change, for they provided in the lease that under certain circumstances KCD would receive increases in rent for increases in its cotton allotment.

KCD contends that *in fact* its cotton allotment *has* increased and was greater during the years now in question (1966-70) than 1015.5 acres. Salyer argues that KCD is asking the state court to determine the appropriate size of the allotment and that such a determination is for the technical expertise of administrative agencies under federal farm laws.

The issue presented by KCD, however, is whether, as a matter of objectively provable fact, KCD's allotment has increased. The Petition is less than candid in implying that KCD wants the state court to determine what its cotton allotment *should be* or to supplant or review any administrative decision. In response to Salyer's summary judgment motion last year, KCD filed a declaration by the manager in charge of its audits at Price Waterhouse & Co. He declared that while examining Salyer's accounts (as provided for in the lease), he was provided by Salyer with one of its internal accounting worksheets. The worksheet stated that KCD's cotton allotment had increased for 1966 "from 1015.5 acres to 1055.0 acres" and even showed Salyer's own calculation of increased rent due KCD by reason thereof. He further stated that KCD's 1966 cotton allotment, as shown in records of the Agricultural

Stabilization & Conservation Service office for Kings County, which he had personally inspected, was 1,055 acres.

Plainly, KCD is not asking the state court to set allotments. Salyer's argument that the size of cotton allotments is for federal determination is thus immaterial. KCD contends that its allotment is objectively provable from existing records.

Salyer's further argument that the trial court cannot calculate the rent owing without determining the allotment (Petition, p. 9) is a diversion. If KCD proves *as a fact* that its allotment *has* increased, the increase in rent thereby will be readily determinable from the plain language of the lease. If KCD fails to prove its *factual* contention, the rent otherwise owing will be unaffected. Nowhere must the trial court determine whether the allotment *should be* increased or by how much.

2. *The $1 Per Bale Contribution to the Cotton Producers Institute.*

The second minor issue is whether *under the lease* Salyer can charge to KCD the expense of Salyer's contributions of $1 per bale of cotton to the Cotton Producers Institute. Salyer contends that federal law compels the expense and that KCD's remedy was to demand a refund under federal law.*

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*In this Court, apparently perceiving the weakness of its argument, Salyer has muted its direct assertion below that the payments are "mandatory" by now saying that they are "voluntary" *to the extent* that they are refundable (Petition, p. 6). That is the same as saying that the payments are compulsory, subject to the possibility of later recovering them. In the California Supreme Court, Salyer asserted that the expense was compelled under penalty (Petition for Hearing by the California Supreme Court, p. 13). Salyer told the California Court of Appeal the same thing (Petition for Writ of Prohibition, p. 26).

The petition neglects to parse the cited statute and to reveal what the lease says. The "remedy" is contained in 7 U.S.C. § 2110:

> ". . . [A]ny cotton producer against *whose cotton* any assessment is made and collected *from him* under the authority of this chapter . . . shall have the right to demand and receive from the Cotton Board a refund. . . ." (Emphasis added.)

To qualify for a refund under this language one must own the cotton and be the person who pays the contribution when it is assessed. The cotton Salyer produces on KCD's land, and then markets, belongs to Salyer. The lease entitles KCD only to money rent, not to any crops. The contribution is "collected from" Salyer. KCD feels the pinch only because Salyer later tries to pass the expense on.

In any event, Salyer's premise—that making the contributions is mandatory—defeats the argument. If mandatory, they are an expense of producing cotton. Paragraph 3 of the lease provides:

> "*All expenses of producing the crops* on the Lands, including, *but without limiting the generality of the foregoing,* power, fuel, fertilizer, seed, weed, pest and rodent control . . . and all processing, storage and transportation charges chargeable to crops produced on the Lands *shall be borne by Salyer.*" (Emphasis added.)

II.

The Federal Farm Statutes Do Not Provide Remedies or Regulations for the Matters in Dispute.

As a large corporate farming concern, Salyer is well versed in federal farm laws. Therefore, the Court can safely assume that the Petition cites all arguably relevant authorities. The cited statutory administrative remedies are inoperative by their own terms in a dispute over the meaning of a private lease. It is not surprising that the Petition fails to cite any case applying those remedies to such a dispute.

The assertedly exclusive remedies are contained in 7 U.S.C. §§1363, 1365, 1367, 1444(d)(10) and 2111. A seriatim review reveals their inapplicability.

Section 1363 provides for initial committee review *of a farm marketing quota.* By its own terms, §1363 applies only to a "farmer who *is dissatisfied* with his farm marketing quota" (emphasis added). KCD is not dissatisfied with any quota.

Section 1365 provides for court review of the committee review provided for in § 1363. Section 1365 is immaterial for the same reason as §1363: It applies only "[i]f the farmer is *dissatisfied* with the determination of the review committee" (emphasis added).

Section 1367 provides, in pertinent part:

> ". . . [T]he jurisdiction conferred *by this part* to review the legal validity of a determination made *by a review committee pursuant to this part* shall be exclusive. No court of the United States or of

> any State shall have jurisdiction to pass upon the legal validity of any *such determination* except in a proceeding under this part." (Emphasis added.)

Obviously, this section's "exclusivity" operates only with respect to the remedies in §§1363 and 1365, which in turn operate only when a farmer "is dissatisfied" with a marketing quota and disputes it. As KCD is not in that category, §1367 is irrelevant.

The next administrative "remedy", §1444(d)(10), provides in pertinent part:

> "The Secretary shall provide adequate safeguards to protect *the interests of tenants and sharecroppers,* including provision for sharing diversion payments on a fair and equitable basis under this subsection. The Secretary shall provide for the sharing of price support payments among *producers on the farm* on the basis of their *respective shares* in the cotton crop produced on the farm, or the proceeds therefrom. . . ." (Emphasis added.)

Salyer's argument apparently is, as it was below (Pet. for Hrg. by the Calif. Supreme Court, p. 5), that Congress by this language required that "the Secretary of Agriculture review and approve such things as private agreements" in which rents may be affected by price support levels. Had Congress so intended, it would have said so scrutably. Salyer's reading inserts an altogether unexpressed Congressional intent.

In any event, §1444(d)(10) is inapplicable for other separate and independent reasons.

First, KCD is not a "*producer on the farm*", which is prerequisite to the operation of §1444(d)(10). The context shows that the qualification, "on the farm",

is not to be disregarded. Read as a whole, the section was obviously intended to cover sharecroppers or co-tenants who, in common with others, physically farm a given parcel. KCD is not in that category.

Second, by its terms the section covers only a direct sharing, a dividing up as such, of price support payments between persons having shares in the cotton crop or its proceeds. Direct sharing is not involved in this case. The issue is how to arrive at the "price of cotton received by Salyer" in order to work the arithmetic formula in the lease and determine the rent.

Third, Salyer's own argument denies the applicability of § 1444(d)(10). If the statute applied in the present context, KCD would have had a right to share directly in price support payments. Yet Salyer argues that KCD bargained away any such right by acceding to paragraph 28, discussed *supra*. Thus, the essence of Salyer's argument is that the parties could and did privately contract with respect to price support payments. By so arguing, Salyer itself denies that §1444 (d)(10) has any role in this case.

The last statutory remedy, that of §2111, applies only to the $1 per bale contribution. Therefore, even if applicable, and it is not, it would reach only a minor issue. In pertinent part, §2111 provides:

> "(a) Any person . . . may file a written petition . . . that [the $1 per bale contribution] *is not in accordance with law*. . . . He shall thereupon be given . . . a hearirg . . . After such hearing, the Secretary shall make a ruling. . . .
>
> "(b) The district courts of the United States . . . are hereby vested with jurisdiction to review such ruling. . . ." (Emphasis added.)

The section is self-evidently not applicable. KCD does not maintain that the $1 per bale obligation "is not in accordance with law". The complaint questions not the legality of the government's requiring the contribution, but the propriety, *under the lease,* of Salyer's charging the expense to KCD.

III.

The Federal Farm Statutes Evidence No Congressional Intent to Preclude State Court Determination of Contractual Disputes of the Sort Here Presented.

The Congressional intent expressed in the statutes Salyer cites is plainly confined to promoting conservation, maximizing farm income and controlling crop surpluses by regulating agricultural production and marketing. 7 U.S.C. §§1282 and 1341. If Congress had ever expressed any intent to affect private contractual disputes having no impact upon such regulation, the Petition would certainly have quoted it.

Unaided by the statutes themselves, the Petition offers three cases. None is in point.

From the first case, *Jilka v. Saline County, Kansas,* 330 Fed.2d 73 (10th Cir. 1964), the Petition quotes language about the exclusivity of the statutory review procedure (Petition, pp. 7-8), but neglects to note that the dispute was not between two private parties over the meaning of a contract with respect to private property. The dispute was between farmers and an administrative agency over a decision of the agency. The statutory review procedure was operative precisely for that reason. KCD's dispute, on the other hand, is not with the decision of any agency and is therefore outside the statutory ambit.

The second case, *Allen v. David,* 334 Fed.2d 592 (5th Cir. 1964), was likewise a dispute between farmers and the local administrative agency, which had cancelled the farmers' rice acreage allotments. In the case at bar, neither of two private parties asserts dissatisfaction with any administrative action. By highly selective quotation, the case can be made to look as though it teaches that the administrative review provisions in the federal farm laws are exclusive in all disputes involving farmers (Petition, p. 8). In fairness, however, the Court should be informed of the sentence immediately preceding the quotation in the Petition:

> "There are no personal rights of property created in the plaintiffs by the Act which would allow them to recover in a suit against governmental functionaries." (334 Fed.2d at 599.)

This ruling helps make KCD's point. Federal farm legislation creates no personal property rights for which a private citizen can sue governmental functionaries. Logically then, neither does it purport to affect the sort of personal property rights as between private parties which are involved in this lease dispute.

The third case, *Weir v. United States,* 310 Fed.2d 149 (8th Cir. 1962), was an action by the United States against a rice producer to recover a penalty for raising more rice than the producer's farm marketing quota allowed. The language cited (Petition, p. 17) only confirms what is not in dispute in the case at bar: The statutory scheme establishes the exclusive means by which a farmer dissatisfied with a crop marketing quota can attack the administrative decision. Like the two other cited cases, *Weir* says nothing, even tangentially, about a dispute between private parties

over a private contract not involving any dissatisfaction with any administrative decision.

In *Fulford v. Forman,* 245 F.2d 145 (5th Cir. 1957), Congressional intent was described as follows:

> "Of course, the heart of the Act is the elimination of excessive supplies of cotton, 7 U.S.C.A. § 1341, through a detailed scheme for regulating production. 'The framework of the Act itself, both as originally passed and as amended, and the reports of the congressional committees that drafted it, show a prime purpose to limit national and individual farm production and marketing to the quotas allotted * * *,' Rodgers v. United States, 332 U.S. 371, 375. . . . And control of '* * * total supply, upon which the whole statutory plan is based, depends upon control of individual supply,' Wickard v. Filburn, 317 U.S. 111, 130. . . ." (245 F. 2d at 149-50.)

This Congressional intent has nothing to do with how landlords and tenants calculate rent in leases. There is no hint in such intent that state courts are to be at all inhibited in exercising their traditional jurisdiction over private contractual disputes between their own domiciliaries simply because farmland is involved. As a state court said in *Duncan v. Black,* 324 S.W.2d 483 (Mo. Ct. of App. 1959), in ruling upon a private contract made with reference to a cotton allotment:

> "The purpose and general scheme of the [Agricultural Adjustment] Act is to accomplish a national public benefit in controlling surplus and consequent abnormal prices by limiting production. . . ." (324 S.W.2d at 485.)

KCD's suit in no way encroaches upon such a purpose or scheme.

IV.

In the Absence of Administrative Remedies, KCD's Case Is Properly Before the State Court.

Salyer asserts that California law requires exhaustion of administrative remedies (Petition, p. 7). Surely the California Supreme Court and the California Court of Appeal did not summarily refuse Salyer's petitions below in ignorance of their own prior decisions.

Thus, in *County of Alpine v. County of Tuolumne,* 49 Cal. 2d 787 (1958), a county sought judicial determination of boundaries without seeking an administrative remedy which was inapplicable by its terms. The California Supreme Court said:

> "Defendants rely on the established rules that 'where an administrative remedy is provided by statute, relief must be sought before the administrative body and this remedy exhausted before the courts will act' [citation omitted], and that 'it lies within the power of the administrative agency to determine in the first instance, and before judicial relief may be obtained, whether a given controversy falls within the statutory grant of jurisdiction' [citation omitted]. *But these rules are inapplicable where, as here, the agency is given no jurisdiction to make a judicial determination of the type involved.*" (49 Cal. 2d at p. 798) (Emphasis added.)

In *MacLeod v. City of Los Altos,* 182 Cal. App. 2d 364 (1960), the court enjoined enforcement of a city ordinance which regulated business solicitation without a permit and was plainly intended to apply to sales of

goods. Plaintiffs proposed to solicit political contributions. The court said:

> "But, say appellants, plaintiffs did not exhaust their administrative remedy under section 9, by applying for a permit. The short answer is that, because the ordinance does not apply to plaintiffs' activities, the administrative remedy set up by it has no application to them." (182 Cal. App. 2d at 369.)

V.

Conclusion.

The case at bar in no way disputes or interferes with any order, act or authority of any federal officer or agency. The case involves only a controversy between two private parties with respect to contractual rights in private property. The petition therefore should be denied.

Respectfully submitted,

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